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ABSTRACT

A survey was conducted of colleges and universities to determine the use of exemption for tenured faculty members and of decoupling measures permitted under Department of Labor regulations. The survey was a followup of an earlier study by the American Council on Education. The followup sample was composed of the 353 institutions in the original study and 25 institutions added to make the sample more geographically comprehensive. Completed questionnaires were received from 232 institutions. Respondents were asked to indicate which of five stated options on the issue of mandatory retirement would best serve the interests of higher education. Outright opposition to "uncapping" legislation received about 44 percent of the vote, and the options of "seeking a permanent exemption for tenured faculty members" and "pointing out implications for faculty employment practices" each received about one-quarter of the total vote. Eighty-three percent of all respondents reported that they had a mandatory retirement age. Data are presented on the mandatory retirement age for tenured and for nontenured faculty members. The number of institutions reporting that they will and will not use the exemption and the reasons offered by those who will not use it are presented. Thirty-one percent of institutions have used or intend to use decoupling policies. (SW)

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HIGHER EDUCATION RESPONDS TO CHANGING RETIREMENT LAWS: A FOLLOW-UP REPORT

Last year Congress passed and President Carter signed into law the Age Discrimination in Employment Act (ADEA) amendments of 1978, which make it illegal for employers to require that employees retire before age 70. One of the exceptions in the law permits colleges and universities to retire tenured employees at age 65 until July 1, 1982.

Anticipating passage of the ADEA amendments, the American Council on Education collected data, through a mailed survey of a representative sample of colleges and universities conducted in early 1978, on current tenure systems and retirement policies and analyzed the projected impact of the new legislation on faculty employment and institutional compensation costs. (See Thomas M. Corwin and Paula R. Knepper, Finance and Employment Implications of Raising the Mandatory Retirement Age for Faculty, Policy Analysis Service Reports, Vol. 4, No. 1, December 1978).

In recent months, just how the new amendments would affect institutional retirement policies has been uncertain: Would colleges use the exemption for tenured faculty members? Would they use the "decoupling" measures permitted under Department of Labor regulations? To answer these and other questions, a follow-up survey of institutions was needed.

Another pressing question arises from the possibility that Congress will enact legislation to outlaw mandatory retirement at any age. Such bills have already been introduced in the 96th Congress, and committee hearings on the issue may be conducted this year. In light of this situation, an additional objective of the new survey was to learn what college administrators regard as the appropriate position for higher education on the issue of prohibiting all mandatory retirement.

The follow-up sample was composed of the 353 institutions in the original study--selected to represent the universe of higher education institutions on the basis of level, control, and enrollment--plus 25 institutions added to make the sample more geographically comprehensive. Completed questionnaires were received from 232 institutions (for a response rate of 62 percent) representing all 50 states and the District of Columbia. Respondents did not differ significantly from nonrespondents in level, type, or enrollment and thus may be regarded as representative of the nation's colleges and universities. The one-page questionnaire was usually completed by a high-level administrator, most frequently the chief executive officer (president, chancellor, director).

Opinions on Prohibiting All Mandatory Retirement

Respondents were asked to indicate which of five stated options on the issue of mandatory retirement would best serve the interests of higher education. Table 1 shows the distribution of responses overall, and Table 2 gives a more detailed presentation, by level and control of institution.

Table 1

Opinions On Prohibiting All Mandatory Retirement[a]

Preferred Position	Number	Percent
Opposing the legislation	101	44.3
Not opposing the legislation, but seeking a permanent exemption for tenured faculty members	57	25.0
Not opposing the legislation, but pointing out the implications for faculty employment practices	56	24.6
Supporting the legislation	7	3.1
Taking no position	7	3.1
Total	228[b]	100.1

[a]The question read: "If the 96th Congress seriously considers legislation to prohibit mandatory retirement at any age, what position would best serve higher education's interests?"

[b]Four respondents did not answer this question.

Table 2

Distribution Of Opinions On Eliminating All Mandatory Retirement, By Institutional Level And Control (In Number Of Votes)[a]

Preferred Position	Public			Private		
	University	4-Year	2-Year	University	4-Year	2-Year
Oppose	14.5	8	29	7.5	37	5
Permanent exemption	2.5	11	10.5	5.5	24.5	3
Implications	6	12	17.5	1	15.5	4
Support	0	0	1	0	4	2
No position	0	0	1	0	4	2
Total	23	31	59	14	85	16

[a]Several institutions selected more than one option. Votes of those institutions were allocated, on a percentage basis, among all options selected. For that reason, some vote totals are not in whole numbers.

It is clear that outright opposition to "uncapping" legislation was easily the most popular option, receiving about 44 percent of the vote. The options of "seeking a permanent exemption for tenured faculty members" and "pointing out implications for faculty employment practices" each garnered about one-quarter of the total vote. The options of "supporting the legislation" and "taking no position" received very little support.

If the first two options (outright opposition and support of a permanent exemption for tenured faculty) are combined as varieties of opposition to uncapping legislation, and the other options are combined

as varieties of nonopposition, then close to seven in ten respondents were opposed to such legislation. Considering each institutional type individually, one finds that at least half of the respondents in each group were opposed; indeed, only in private two-year colleges (which constituted 7 percent of all responding institutions) did fewer than 60 percent of the respondents vote for opposition. Private universities (another small group) were the institutions most antagonistic to uncapping legislation, with 93 percent of the respondents favoring some kind of opposition.

A comparison of responses by institutional type reveals some variation in preference for outright opposition over support for a permanent exemption for tenured faculty. Taken as a whole, respondents were about one-and-three-quarters times more likely to favor opposition over exemption. While all three types of private institutions had a pattern of responses similar to the overall pattern, the responses of the three levels of public institutions were more varied: Public universities and two-year colleges were much more likely than average to favor opposition over support of an exemption, whereas public four-year colleges veered in the other direction.

Current Mandatory Retirement Provisions

The earlier survey found that 91 percent of all institutions had a mandatory retirement age for faculty members. By far the most common (in force at 65 percent of all institutions) was age 65; the next most common (15 percent) was age 70. The remaining institutions (11 percent) mandated retirement at some age between 66 and 69.

This year 83 percent of all respondents reported that they had a mandatory retirement age. This decline of 8 percentage points over the two-year period can be attributed chiefly to changes in institutional policies. Public and private universities were most likely to have a mandatory retirement age (93 percent), and private two-year colleges were least likely (50 percent). The proportions for other institutional types were close to the proportion for respondents as a whole.

In light of the temporary exemption for tenured faculty members in the ADEA amendments, the current survey asked institutions to indicate separately the mandatory retirement age for tenured and for nontenured faculty members. Table 3 shows the results. Surprisingly, the largest number of institutions in any data cell (35 percent of the respondents) are those which still, after the effective date of the legislation, set a mandatory retirement age of 65 for both tenured and nontenured faculty members. A somewhat smaller number (30 percent) mandated retirement for both groups at age 70. Only 6.5 percent required retirement at age 70 for nontenured faculty members and at a younger age for tenured faculty members, though one might expect that many institutions would have fallen in those cells.

This pattern of responses probably reflects traditional retirement patterns in higher education. Most faculty members retire between academic years. Few nontenured faculty members are ever in a position to be affected by mandatory retirement provisions. Therefore, very few institutions have yet been through the experience of applying the new retirement laws to nontenured faculty members. While the ADEA amendments specify that nontenured

faculty members must no longer be forced to retire before age 70, they do not say that previous retirement provisions must be revised immediately if no one is being affected by them. Several respondents reported that they were actively considering what policy changes to make, that proposed revisions of retirement rules were on the agenda for winter or spring governing board meetings, or that other actions were being taken. Thus, one can assume that, if the survey had been conducted six months later, the pattern of responses would have been different.

Table 3

Institutional Mandatory Retirement Ages,
For Tenured And Nontenured Faculty Members
(In Number Of Institutions)

Age for Tenured Faculty Members	Age for Nontenured Faculty Members					
	65	67	68	70	UK or NA[a]	Total
65	82	0	0	14	9	105
66	0	0	0	1	0	1
67	0	2	0	0	2	4
68	0	0	7	0	0	7
70	1	0	0	47	3	51
UK or NA[a]	8	0	0	12	44[b]	64
Total	91	2	7	74	58	232

[a]Unknown or not applicable

[b]Includes 39 institutions with no mandatory retirement.

Respondents were asked what changes their institutions had made in retirement policies during the past year. At 11 institutions (4.7 percent of the sample), mandatory retirement provisions had been dropped. An additional 47 respondents (20 percent) reported a change in the mandatory retirement age; in all cases, this change entailed raising the age to 70 for tenured faculty or nontenured faculty or both. Finally, ten respondents (4.3 percent) described other changes, which usually involved codifying a previously informal retirement policy, instituting provisions for early or phased retirement, or setting in motion a process which will eventually result in compliance with the ADEA amendments.

Intention to Use the Tenured Faculty Exemption

One question that arises since enactment of the ADEA amendments is, How many colleges intend to take advantage of the three-and-a-half-year exemption, for tenured employees, from the prohibition of mandatory retirement before age 70. Merely restricting the eligible population to those colleges and universities with tenured faculty members not previously allowed to continue teaching until age 70 leaves out many institutions. Other institutions which are eligible may decide that it is unfair to treat different classes of faculty members differently on issues of retirement. Yet if one policy option is to grant a permanent exemption for tenured faculty members (from a prohibition of mandatory retirement either before age 70 or at any age), then it will be useful to know how many institutions will use the exemption already provided.

Table 4 shows the number of institutions reporting that they will and will not use the exemption and the reasons offered by those who will not use it. The institutions reporting that they are prevented by state law from using the exemption are located in 11 states (California, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Minnesota, New Hampshire, Ohio, Rhode Island, and South Carolina). Among the 25 institutions giving "other" reasons, several responses came up more than once: that no faculty members will reach age 65 before July 1982 (cited by nine institutions), that it would be unfair to have different retirement ages for different classes of faculty members (four institutions), that the institution had recently switched to a mandatory retirement age of 70 or expected to do so soon (four institutions). Among the reasons cited by single institutions were faculty morale, the provisions of a collective bargaining agreement, the agreement of affected faculty members to retire voluntarily, and, at one U.S. service academy, the protection of civilian faculty members as federal employees from mandatory retirement at any age.

Table 4

Institutional Plans for Using the Tenured Faculty Exemption[a]

	Number	Percent
Yes	107	46.3
No	124	53.7
Total	231	100.0

"If no, why not?"	Number	Percent of Responses	Percent of Institutions
Institution does not have tenure	40	30.5	32.8
Not permitted under state law	20	15.3	16.4
Tenured faculty members could continue until age 70 even before passage of the ADEA amendments.	39	29.8	32.0
Difficulty of administering two retirement ages	7	5.3	5.7
Other	25	19.1	20.5
Total	131[b]	100.0	107.4

[a]The question read: "Under the Age Discrimination in Employment Act amendments of 1978, colleges and universities are permitted to mandate retirement of tenured faculty members at age 65 until July 1, 1982. For other employees, mandatory retirement is not permitted until age 70. Does your institution intend to make use of the tenured faculty exemption?"

[b]One hundred and twenty-two institutions gave at least one reason why they would not use the exemption. Nine institutions gave more than one reason.

In considering institutional decisions on whether to use the exemption, it may be appropriate to focus on those institutions which have some choice in the matter. One way to do this is to exclude from consideration institutions which do not have tenure and those which are prevented by federal or state law from using the exemption. Of the remaining schools, 61.5 percent intended to use the exemption. Alternatively, one can exclude the institutions which, before the ADEA amendments went into effect, were already allowing tenured faculty members to teach until age 70. Of the remaining institutions, 85.5 percent will use the exemption. Even at this stage, the 27 remaining institutions which are choosing not to use the exemption include seven which will have no faculty members in the 65-69 age range before 1982 and for which the exemption is irrelevant.

Experience with and Intention to Use Decoupling

The Department of Labor, in its interpretation of the tenured faculty exemption, considered the issue of

> whether employees who fall within the exemption may be offered a change in position or status, which is short of forced retirement, and which therefore allows them to remain as employees.
>
> (Federal Register, December 12, 1978, pp. 58154-56)

If such a change in employment status were prohibited, the institution would be placed in the position of being permitted to force a faculty member to retire but not to convert the faculty member to nontenured or part-time status. To avoid such a situation, the Department took the position that it would not

> question a conversion to part-time status or other change in position or status short of forced retirement, provided that the employee voluntarily accepts this new position or status, and that he or she is treated no less favorably than similarly situated younger employees.

This interpretation raised the question of how many institutions have used or intend to use conversion or "decoupling" provision, a question that the survey was intended to answer. Respondents were asked whether their institutions had used such provisions before the ADEA amendments went into effect and whether they intend to maintain them until July 1982.

A minority (31 percent) of institutions have used or intend to use decoupling policies. All levels of private institutions were more likely than all levels of public institutions to have used and to intend to use them.

Institutions which have used decoupling were asked to describe their policies. Of the 67 institutions supplying such descriptions, 34 reported that faculty members are retired at some age under 70 but can be rehired on an annual (or in some cases a quarterly or semester-by-semester) basis, generally at the discretion of the institution, until age 70. In most cases, this practice entails loss of tenure before age 70. Loss of tenure also occurs at 13 other institutions where retirement before age 70 is not automatic. At ten institutions, faculty are automatically converted to part-time status before age 70; at other institutions where such conversion is not automatic, reduction to part-time status often occurs.

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